

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, and 1926

[Docket No. OSHA-2008-0031]

RIN 1218-AC42

Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of hearing.

SUMMARY: OSHA is convening an informal public hearing to receive testimony and documentary evidence on the proposed rule for Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees.

DATES: *Informal public hearing.* The Agency will hold the informal public hearing in Washington, DC, beginning October 6, 2008. The hearing will commence at 10 a.m. on the first day. If necessary, the hearing will continue on October 7, 2008, beginning at 9 a.m.

Notice of intention to appear to provide testimony at the informal public hearing.

Parties must notify OSHA in writing no later than September 26, 2008, of their intention to appear at the hearing to present testimony. OSHA is limiting each party's testimony to 10 minutes. If parties need additional time, they must submit a written request with their notice of intention to appear stating how much time they seek, the topics they will cover during their testimony, and why they cannot cover the topics in the 10 minutes allotted.

ADDRESSES: Informal Public Hearing. The informal public hearing will be held in Washington, DC, Conference Room 6, Room C-5320 of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Notices of intention to appear at the hearing. Submit notices of intention to appear at the informal public hearing and requests for additional time to testify, identified by the docket number (OSHA-2008-0031) or the regulatory information number (RIN 1218-AC42), using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting the material.

Facsimile: Send submissions consisting of 10 or fewer pages to the OSHA Docket Office at (202) 693-1648. Hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA-2008-0031) so that the Agency can attach them to the appropriate document.

Regular mail, express delivery, hand delivery, and courier service: Send submissions (single copy only) to the OSHA Docket Office, Docket No. OSHA-2008-0031, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Note that security-related problems may result in significant delays in receiving submissions by regular mail. Please contact the OSHA

Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or courier service. The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

Instructions. Each submission must include the Agency name and the OSHA docket number (i.e., OSHA-2008-0031). All submissions, including any personal information, are placed in the public docket without revision, and will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions members of the public against submitting information and statements that should remain private, including comments that contain personal information (either about themselves or others) such as social security numbers, birth dates, and medical data. For additional information on submitting notices of intention to appear, see the Public Participation-Comments and Hearings section in the SUPPLEMENTARY INFORMATION section below.

Docket. To read or download comments, notices of intention to appear, and other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Jennifer Ashley, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999. For hearing information, contact Ms. Veneta

Chatmon, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.

Electronic copies of this Federal Register notice, as well as news releases and other relevant documents, are available at OSHA's homepage at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION: OSHA published the proposed rule for Clarification of Remedy for Violation of Requirements to Provide Personal Protective Equipment and Train Employees on August 19, 2008 (73 FR 48335). The period for submitting written comments expires on September 18, 2008. During this comment period, a number of commentors (see, e.g., Exs. OSHA-2008-0031-006.1, -007.1, -009.1, -0011.1, -0012.1) requested an informal public hearing. With this notice, OSHA is granting these requests.

Public Participation-Comments and Hearings: OSHA encourages members of the public to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. Accordingly, the Agency invites interested parties having knowledge of, or experience with, the issues raised in the proposal to participate in this process, and welcomes any pertinent data that will provide the Agency with the best available evidence to use in developing the final rule. This section describes the procedures the public must use to schedule an opportunity to deliver oral testimony and to provide documentary evidence at the informal public hearing.

Hearing Arrangements. Pursuant to section 6(b)(3) of the Occupational Safety and Health Act (the Act; 29 U.S.C. 655), members of the public have an opportunity at the informal public hearing to provide oral testimony concerning the issues raised in the proposed rule. An administrative law judge (ALJ) will preside over the hearing, and will

resolve any procedural matters related to the hearing on the first day.

Purpose of the Hearing. The legislative history of Section 6 of the Act, as well as the Agency's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ, and questions by interested parties are allowed on pertinent issues, the hearing is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the technical rules of evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. The regulations that govern the hearing, and the prehearing guidelines issued for the hearing, will ensure that participants are treated fairly and have due process. This approach will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedures, and participation will be decided in favor of developing a clear, accurate, and complete record.

Conduct of the Hearing. Conduct of the hearing will conform to the provisions of 29 CFR 1911.5. Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the proposal or the final rule, the ALJ has the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested parties receive a full and fair informal hearing, the ALJ has the authority and power to: regulate the course of the proceedings; dispose of procedural requests, objections, and similar matters; confine the presentations

to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. As indicated in the proposed rule, OSHA will allow an additional 30-day period for submission of posthearing comments before closing the public comment period (74 FR 48344).

Notice of intention to appear to provide testimony at the informal public hearings.

Hearing participants must file a notice of intention to appear that provides the following information: The name, mailing and email addresses, and telephone number of each individual who will provide testimony; the capacity in which the individual will testify (e.g., name of the establishment/organization the individual is representing; the individual's occupational title and position); and whether the individual is appearing as a part of a panel with other individuals. Participants who need projectors and other special equipment for their testimony must contact Ms. Veneta Chatmon at OSHA's Office of Communications, telephone (202) 693-1999.

As noted above, testimony will be limited to 10 minutes. Requests for additional time must be submitted in writing with the notice of intention to appear, and contain a reasoned justification, including identification of the topics to be discussed and an explanation of why these topics cannot be covered in 10 minutes. OSHA will review the request and determine how much, if any, additional time to allot to the individual. Individuals requesting additional time will be notified of OSHA's determination on their request prior to the hearing.

OSHA emphasizes that, while the hearing is open to the public and all interested parties are welcome to attend, only a party who files a proper notice of intention to

appear may ask questions and participate fully in the hearing. A party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, but this determination is at the discretion of the presiding ALJ.

Certification of the record and final determination after the informal public hearing. Following the close of the hearing and the posthearing comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. This record will consist of all of the written comments, oral testimony, documentary evidence, and other material received during the hearing. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

Authority and Signature:

This document was prepared under the authority of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Secretary of Labor's Order 5-2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, this 15th day of September 2008.

Edwin G. Foulke, Jr.,
Assistant Secretary of Labor for Occupational Safety and Health.

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